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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/991,809	11/23/2001	George Jackowski	2132.111	5604
21917	7590	11/01/2005	EXAMINER	
MCHALE & SLAVIN, P.A. 2855 PGA BLVD PALM BEACH GARDENS, FL 33410			DAVIS, DEBORAH A	
			ART UNIT	PAPER NUMBER
			1641	

DATE MAILED: 11/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/991,809

Applicant(s)

JACKOWSKI ET AL.

Examiner

Deborah A. Davis

Art Unit

1641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 39-46 is/are pending in the application.
- 4a) Of the above claim(s) 39-46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicants' petition to revive abandonment of the instant invention has been accepted. Applicant's response to the Office Action mailed on October 6, 2003 has been acknowledged. Currently, claims 1 and 39-46 are pending. Claim 1 is considered for examination and claims 39-46 has been withdrawn from consideration.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Durham et al., US Publication (2004/0022794 A1).

The instant claim 1 is drawn to an isolated biopolymer marker consisting of SEQ ID NO:1. The prior art of Durham et al teaches the sequence structure consisting of SEQ ID NO:1 of the instant claimed invention (see page 12, SEQ ID NO: 25).

Response to Arguments

3. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection above.

Art Unit: 1641

4. Applicant's argument with respect to 35 USC 112, first paragraph (written description) has been found to be persuasive and the rejection is hereby withdrawn.
5. Applicant's argument with respect to 35 USC 101 (utility) has been found to be persuasive and the rejection is hereby withdrawn.
6. Applicant's argument with respect to 35 USC, first paragraph enablement rejection in reference to a substantial and credible use of SEQ ID NO: 1 has been found to be pervasive and the rejection is hereby withdrawn.

Conclusion

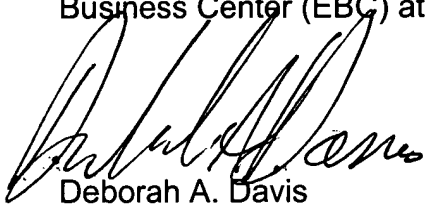
4. No claims are allowed.
5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:
 - A. US20040072261 A1 – teaches the structure of SEQ ID NO:1
 - B. US20040203023 A1 – teaches the structure of SEQ ID NO: 1
 - C. US20050163789 A9 – teaches the structure of SEQ ID NO: 1

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah A. Davis whose telephone number is (571) 272-0818. The examiner can normally be reached on 8-5 Monday thru Friday.

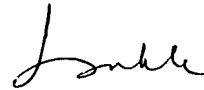
Art Unit: 1641

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le can be reached on (571) 272-0823. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Deborah A. Davis
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Room 3D58
October 19, 2005



LONG V. LE
SUPERVISORY PATENT EXAMINER
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10/28/05